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CS/HB 1353, Engrossed 1

2023 Legislature

1
 2 An act relating to commercial financing product
 3 brokers and providers; creating part XIII of ch. 559,
 4 F.S., entitled "Florida Commercial Financing
 5 Disclosure Law"; creating s. 559.961, F.S.; providing
 6 a short title; creating s. 559.9611, F.S.; defining
 7 terms; creating s. 559.9612, F.S.; providing
 8 applicability; creating s. 559.9613, F.S.; requiring
 9 providers that consummate commercial financing
 10 transactions to provide specified written disclosures;
 11 authorizing providers to provide specified required
 12 disclosures when consummating a commercial financing
 13 facility which are based on an example of a
 14 transaction; specifying that disclosures are not
 15 required under certain circumstances; creating s.
 16 559.9614, F.S.; prohibiting brokers from taking
 17 specified actions; creating s. 559.9615, F.S.;
 18 providing exclusive authority of the Attorney General
 19 to enforce specified provisions; providing civil
 20 penalties; providing construction; providing an
 21 effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:
 24

25 Section 1. Part XIII of chapter 559, Florida Statutes,

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26 | consisting of sections 559.961, 559.9611, 559.9612, 559.9613,
 27 | 559.9614, and 559.9615, Florida Statutes, is created to read:

28 | PART XIII

29 | FLORIDA COMMERCIAL FINANCING DISCLOSURE LAW

30 | 559.961 Short title.—This part may be cited as the
 31 | "Florida Commercial Financing Disclosure Law."

32 | 559.9611 Definitions.—As used in this part, the term:

33 | (1) "Accounts receivable purchase transaction" means a
 34 | transaction in which a business forwards or otherwise sells to a
 35 | person all or a portion of the business's accounts or payment
 36 | intangibles as those terms are defined in s. 679.1021(1) at a
 37 | discount to the expected value of the account or payment
 38 | intangibles. For purposes of this part, the provider's
 39 | characterization of an accounts receivable purchase transaction
 40 | as a purchase is conclusive that the accounts receivable
 41 | purchase transaction is not a loan or a transaction for the use,
 42 | forbearance, or detention of money.

43 | (2) "Advance fee" means any consideration that is assessed
 44 | or collected by a broker before the closing of a commercial
 45 | financing transaction.

46 | (3) "Broker" means a person who, for compensation or the
 47 | expectation of compensation, arranges a commercial financing
 48 | transaction or an offer between a third party and a business in
 49 | this state which would, if executed, be binding upon that third
 50 | party. The term excludes a provider and any individual or entity

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51 whose compensation is not based or dependent upon the terms of
 52 the specific commercial financing transaction obtained or
 53 offered.

54 (4) "Business" means an individual or a group of
 55 individuals, a sole proprietorship, a corporation, a limited
 56 liability company, a trust, an estate, a cooperative, an
 57 association, or a limited or general partnership engaged in a
 58 business activity.

59 (5) "Commercial financing facility" means a provider's
 60 plan for purchasing multiple accounts receivable from the
 61 recipient over a period of time pursuant to an agreement that
 62 sets forth the terms and conditions governing the use of the
 63 facility.

64 (6) "Commercial financing transaction" means a commercial
 65 loan, an accounts receivable purchase transaction, or a
 66 commercial open-end credit plan to the extent the transaction is
 67 also a business purpose transaction. As used in this subsection,
 68 the term "business purpose transaction" means a transaction the
 69 proceeds of which are provided to a business or are intended to
 70 be used to carry on a business and not to be used for personal,
 71 family, or household purposes. For purposes of determining
 72 whether a transaction is a business purpose transaction, the
 73 provider may rely on any written statement of intended purpose
 74 signed by the business. The statement may be a separate
 75 statement or may be contained in an application, agreement, or

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76 other document signed by the business or the business owner.

77 (7) "Commercial loan" means a loan to a business, whether
 78 secured or unsecured.

79 (8) "Commercial open-end credit plan" means commercial
 80 financing extended by any provider under a plan in which:

81 (a) The provider reasonably contemplates repeat
 82 transactions.

83 (b) The amount of financing that may be extended to the
 84 business during the term of the plan, up to any limit set by the
 85 provider, is generally made available to the extent that any
 86 outstanding balance is repaid.

87 (9) "Depository institution" means a Florida state-
 88 chartered bank, savings bank, credit union, or trust company, or
 89 a federal savings or thrift association, bank, credit union,
 90 savings bank, or thrift.

91 (10) "Provider" means a person who consummates more than
 92 five commercial financing transactions with a business located
 93 in this state in any calendar year. The term also includes a
 94 person who enters into a written agreement with a depository
 95 institution to arrange a commercial financing transaction
 96 between the depository institution and a business via an online
 97 lending platform administered by the person. The fact that a
 98 provider extends a specific offer for a commercial financing
 99 transaction on behalf of a depository institution may not be
 100 construed to mean that the provider engaged in lending or

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101 financing or originated that loan or financing.
 102 559.9612 Scope of this part.—This part applies to any
 103 commercial financing transaction consummated on or after January
 104 1, 2024. This part does not apply to:
 105 (1) A provider that is:
 106 (a) A federally insured depository institution or an
 107 affiliate or holding company of such institution; or
 108 (b) A subsidiary or service corporation that is owned and
 109 controlled by a federally insured depository institution or
 110 under common ownership with such institution.
 111 (2) A provider that is a lender regulated under the Farm
 112 Credit Act of 1971, 12 U.S.C. ss. 2001 et seq.
 113 (3) A commercial financing transaction that is:
 114 (a) Secured by real property;
 115 (b) A lease; or
 116 (c) A purchase money obligation that is incurred as all or
 117 part of the price of the collateral or for value given to enable
 118 the business to acquire rights in or the use of the collateral
 119 if the value is in fact so used.
 120 (4) A commercial financing transaction in which the
 121 recipient is a motor vehicle dealer or an affiliate of such a
 122 dealer, or a vehicle rental company or an affiliate of such a
 123 company, pursuant to a commercial loan or commercial open-end
 124 credit plan of at least \$50,000 or a commercial financing
 125 transaction offered by a person in connection with the sale or

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126 lease of products or services that such person manufactures,
 127 licenses, or distributes, or whose parent company or any of its
 128 directly or indirectly owned and controlled subsidiaries
 129 manufactures, licenses, or distributes.

130 (5) A provider that is licensed as a money transmitter
 131 under chapter 560 or licensed as a money transmitter by any
 132 other state, district, territory, or commonwealth of the United
 133 States.

134 (6) A provider that consummates no more than five
 135 commercial financing transactions in this state in a 12-month
 136 period.

137 (7) A commercial financing transaction of more than
 138 \$500,000.

139 559.9613 Disclosures.—

140 (1) A provider that consummates a commercial financing
 141 transaction shall provide a written disclosure of the terms of
 142 the commercial financing transaction as required by subsection
 143 (2). The disclosure must be provided at or before consummation
 144 of the transaction. Only one disclosure must be provided for
 145 each commercial financing transaction, and a disclosure is not
 146 required as result of a modification, forbearance, or change to
 147 a consummated commercial financing transaction.

148 (2) A provider shall provide a written disclosure of the
 149 following information in connection with each commercial
 150 financing transaction:

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151 (a) The total amount of funds provided to the business
 152 under the terms of the agreement.

153 (b) The total amount of funds disbursed to the business if
 154 less than the amount specified in paragraph (a) as a result of
 155 any fees deducted or withheld at disbursement, any amount paid
 156 to the provider to satisfy a prior balance, and any amount paid
 157 to a third party on behalf of the business.

158 (c) The total amount to be paid to the provider under the
 159 terms of the agreement.

160 (d) The total dollar cost under the terms of the
 161 agreement, calculated by finding the difference between the
 162 amount specified in paragraph (a) and the amount specified in
 163 paragraph (c).

164 (e)1. The manner, frequency, and amount of each payment;
 165 or

166 2. If the amount of the payments may vary, the manner and
 167 frequency of the payments, the estimated amount of the initial
 168 payment, a description of the methodology for calculating any
 169 variable payment, and the circumstances under which payments may
 170 vary.

171 (f) Whether there are any costs or discounts associated
 172 with prepayment, including a reference to the provision in the
 173 agreement which creates the contractual rights of the parties
 174 related to prepayment.

175 (3) A provider that consummates a commercial financing

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176 facility may provide disclosures required by subsection (2)
177 which are based on an example of a transaction that could occur
178 under the agreement. The example must be based on an account
179 receivable total face amount owed of \$10,000. Only one
180 disclosure is required for each commercial financing facility,
181 and a disclosure is not required as result of a modification,
182 forbearance, or change to the facility. A new disclosure is not
183 required each time accounts receivable are purchased under the
184 facility.

185 559.9614 Prohibited acts.—A broker may not do any of the
186 following:

187 (1) Assess, collect, or solicit an advance fee from a
188 business to provide services as a broker. However, this
189 subsection does not preclude a broker from soliciting a business
190 to pay for, or preclude a business from paying for, actual
191 services necessary to apply for a commercial financing
192 transaction, including, but not limited to, a credit check or an
193 appraisal of security, if such payment is made by check or money
194 order payable to a party independent of the broker.

195 (2) Make or use any false or misleading representation or
196 omit any material fact in the offer or sale of the services of a
197 broker or engage, directly or indirectly, in any act that
198 operates or would operate as fraud or deception upon any person
199 in connection with the offer or sale of the services of a
200 broker, notwithstanding the absence of reliance by the business.

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201 (3) Make or use any false or deceptive representation in
 202 its business dealings.

203 (4) Offer the services of a broker in any advertisement
 204 without disclosing the actual address and telephone number of
 205 the business of the broker and the address and telephone number
 206 of any forwarding service the broker may use, if any.

207 559.9615 Enforcement.—

208 (1) The Attorney General has exclusive authority to
 209 enforce this part. The Attorney General may:

210 (a) Receive and act on complaints.

211 (b) Take action designed to obtain voluntary compliance
 212 with this part.

213 (c) Commence administrative or judicial proceedings to
 214 enforce compliance with this part.

215 (2)(a) A violation of this part is punishable by a fine of
 216 \$500 per incident, not to exceed \$20,000 for all aggregated
 217 violations, arising from the use of the transaction
 218 documentation or materials found to be in violation of this
 219 part.

220 (b) A violation of this part after receipt of a written
 221 notice of a prior violation from the Attorney General is
 222 punishable by a fine of \$1,000 per incident, not to exceed
 223 \$50,000 for all aggregated violations, arising from the use of
 224 the transaction documentation or materials found to be in
 225 violation of this part.

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226 (c) A violation of this part does not affect the
227 enforceability or validity of the underlying commercial
228 financing transaction.

229 (3) This part does not create a private right of action
230 against any person or entity based upon compliance or
231 noncompliance with this part.

232 Section 2. This act shall take effect July 1, 2023.